

DETAILED ACTION

Acknowledgement of Applicant's Amendments

1. The amendments made in claims 1 and 4 in the Amendment filed January 22, 2010 have been received and considered by Examiner.

WITHDRAWN REJECTIONS

2. The 35 U.S.C. 112, second paragraph, rejection of claims 4 and 5 made of record in the previous Office Action has been withdrawn due to Applicant's amendments in claim 4 and Applicant's cancellation of claim 5.

3. The 35 U.S.C. 102 rejection of claims 1-3, 5 and 8 as being anticipated by Nakashima et al. (USPN 4,908,248) made of record in the previous Office Action has been withdrawn due to Applicant's amendments in claim 1 and Applicant's cancellation of claim 5.

Note on Claim Interpretation

4. In regard to the phrase "fully enclosed" in claim 1, Applicant states on page 6 of the Amendment that "closed" "is considered to have the meaning that 'passage between inside and outside is blocked'". This appears to be true in regard to the water-absorbent resin particles, but not true in regard to all substances (such as water). Applicant states in the next sentence on page 6 of the Amendment that "[t]he polyhedron of the present application is made of a water permeable material...", so the passage of water is not "blocked" between inside and outside. Therefore, Applicant's definition of "closed" (and "fully enclosed" in claim 1 as amended) appears to be that passage of the water-absorbent resin particles between inside and outside is

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blocked. Clarification is requested if this is not the definition of “closed” and presumably “fully enclosed” that is supported in Applicant’s specification as originally filed.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakashima et al. (USPN 4,908,248).

In regard to claims 1 and 8, Nakashima et al. teach a water-swellaable sealant (cooling device K when wall part 19 is not engaged with the top wall part 17, but the box is otherwise formed, col. 4, line 58-col. 5, line 15 and Fig. 23 and 24) that comprises water-absorbent resin particles (col. 3, lines 34-35, powder is composed of particles) sealed within a polyhedron composed of a water-permeable sheet (col. 1, lines 32-37), wherein the polyhedron has a structure in which the inside thereof is partitioned into a plurality of rooms, at least one of the partitioned rooms being a fully enclosed chamber (each pouch 1 shown in Fig. 23), where each fully enclosed chamber (each pouch 1) is fully enclosed with a partition (each wall of each pouch corresponds to a partition) and the rest of the rooms is an open chamber that leads to the outside of the polyhedron (the space above the pouches 1 in the box when the wall part 19 is not engaged with the top wall part 17, but the box is otherwise formed). The cooling device K can be used as a cooling box (col. 5, line 11, Fig. 23 and 24), so there is space above the pouches 1 (and inside

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the box) to fit an item or items to cool, so this space in the box (when wall part 19 is not engaged with the top wall part 17) corresponds to the claimed “open chamber”. The water-absorbent resin particles are sealed within the fully enclosed chamber (each pouch 1) (col. 3, lines 6-20 describes the pouches 1 shown in the Figures).

Also note that the recitation “the rest of the rooms being an open chamber leading to the outside of the polyhedron” does not require that there is a plurality of “open chamber[s]”. One “room” can be characterized as “the rest of the rooms”. If there are rooms A, B, C and D, and rooms A, B and C are grouped together, room D corresponds to the “the rest of the rooms” other than rooms A, B and C.

In regard to claim 2, the polyhedron in Fig. 23 and 24 has more than two planar faces.
Fig. 23 and 24.

In regard to claim 3, the polyhedron in Fig. 23 and 24 is rectangular (col. 3, lines 36-42 and Fig. 8-23).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claims 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakashima et al. (USPN 4,908,248).

Nakashima et al. teach the sealant as discussed above in regard to claim 1.

In regard to claim 4, Nakashima et al. fail to specifically teach that the polyhedron has a seam along each edge thereof.

However, Nakashima et al. teach that each face of the box (Fig. 23) is connected (col. 4, line 58-col. 5, line 7). Since seams are a more than well known means of connecting things together, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have connected the faces of the polyhedron (box) of Nakashima et al. with seams along the edges of the box since seams are a more than well known means of connecting things together.

In regard to claim 6, Nakashima et al. fail to specifically teach that the absorbent particles of Nakashima et al. have the claimed properties. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to also have selected a particular absorbent particle having properties that fall within the scope of the claimed ranges in order to achieve the desired properties depending upon the particular desired end result (for example,

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how absorbent the particles should be, depending upon the desired intended use of the sealant).

The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945); *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious); MPEP 2144.07.

In regard to claim 7, Nakashima et al. fail to specifically teach that the absorbent particles of Nakashima et al. have the claimed property. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to also have selected a particular absorbent particle having a time to increase the weight by 15 kg when immersed in deionized water that falls within the scope of the claimed range in order to achieve the desired degree of water absorbency depending upon the particular desired end result. The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945); *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious); MPEP 2144.07.

Response to Arguments

9. Applicant's arguments regarding the 35 USC 102 rejection of claims 1-3, 5 and 8 as being anticipated by Nakashima et al. (USPN 4,908,248), as they apply to the new 35 USC 102

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rejection of claims 1-4 and 8 as being anticipated by Nakashima et al. made of record in this Office Action, have been fully considered but are not persuasive.

Applicant argues that Nakashima et al. does not teach the claimed structure. However, Nakashima et al. teaches the claimed structure for the reasons provided in the rejection of record.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 7:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /
Examiner, Art Unit 1782

4/05/10

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782